STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD JACKSON,

Defendant-Appellant.

UNPUBLISHED
January 25, 2005

No. 250139
Wayne Circuit Court
LC No. 03-004401-01

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Defendant was charged with felon in possession of a firearm, MCL 750.224f(2), carrying a concealed weapon (CCW), MCL 750.227(2), intentionally discharging a weapon from a vehicle, MCL 750.234a(1), and possession of a firearm during the commission of a felony, MCL 750.227b(1). Following a bench trial, defendant was convicted of felon in possession of a firearm, CCW and felony-firearm. He was sentenced to concurrent terms of one year's probation on the felon in possession and CCW convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals as of right. We affirm.

In this case, defendant was convicted at a bench trial of the offense of felon in possession of a firearm pursuant to of MCL 750.224f(2). That section provides that the prior felony be a "specified felony" as defined by MCL 750.224f(6). At trial, the prosecution moved to admit and defendant "stipulated" to the record of defendant's prior 1983 conviction for attempted CCW. The trial court admitted the exhibit, but never affirmatively commented on whether the attempt CCW conviction constituted a "specified felony." Further, defendant never challenged or even commented on whether the prior attempted CCW constituted a "specified felony" during the trial.

Now, for the first time on appeal, defendant argues that because the record is silent on whether the attempted CCW was a "specified felony", the evidence is insufficient to prove the elements of the offense of felon in possession.[1] We disagree. We review this issue de novo on appeal. People v Sherman-Huffman, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). Challenges to the sufficiency of the evidence address whether

[1] Defendant does not challenge his conviction of CCW, which conviction is therefore affirmed.

the facts in evidence can support a finding by a rational fact-finder that each element of the crime was proven beyond a reasonable doubt. People v Harmon, 248 Mich App 522, 524; 640 NW2d 314 (2001).

The elements of felon in possession of a firearm are (1) the defendant was in possession of a firearm and (2) the defendant had previously been convicted of a specified felony. MCL 750.224f(2); CJI2d 11.38a. A specified felony includes any felony offense in which an element of the crime "is the unlawful possession or distribution of a firearm." MCL 750.224f(6)(iii). CCW is a five-year felony, MCL 750.227(3), and thus attempted CCW is also a felony. MCL 750.92(2). CCW can be predicated on the possession of some sort of stabbing weapon or "any other dangerous weapon," MCL 750.227(1), and on the possession of a pistol, MCL 750.227(2). Thus, a conviction of attempted CCW constitutes a specified felony only if it was predicated on possession of a pistol as opposed to any other type of weapon.

Within this legal framework, determining whether defendant's attempted CCW was a "specified felony" is a legal question for the trial court to decide as a matter of law. See CJI2d 11.38a, Use Note 1. Because the determination of an offense's status as a "specified felony" is a question of law, it is not an element of the offense upon which a trial court in a bench trial is required to make findings of fact. The only fact question pertaining to the prior offense is whether defendant was the person who was convicted of that crime in 1983. Id. Defendant does not challenge the sufficiency of the evidence on that fact question. Thus, defendant has not established that the evidence was insufficient to prove the elements of felon in possession.

Further, the trial court's failure to address on the record whether defendant's attempted CCW conviction was a "specified felony" as a matter of law affords defendant no grounds for relief. A trial court must state its conclusion of law on the record only when the matter is contested. MCR 2.517(A)(2). The reason for requiring specific findings is to allow appellate review. See People v Armstrong, 175 Mich App 181, 184; 437 NW2d 343 (1989). Here, defendant "stipulated" to the admission of the record of the prior attempted CCW, made no challenge of any kind to it being a "specified felony" and argued only that defendant should not be convicted of being a felon in possession because defendant's prior conviction was 20 years old and defendant had since established himself as an upstanding citizen. Under these circumstances, no need existed for the trial court to make a record on the legal issue of whether defendant's attempted CCW conviction was a "specified felony" because the matter was uncontested.

Because defendant's conviction for felon in possession must be affirmed, defendant's argument for reversing the felony firearm conviction is unavailing.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello